

Administrator, Aquaf Jammu Vs. Devinder Kumar Gupta

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Court : Jammu and Kashmir

Decided On : Mar-05-2008

Reported in : 2008(2)JKJ226

Judge : Bashir A. Kirmani, J.

Appellant : Administrator, Aquaf Jammu

Respondent : Devinder Kumar Gupta

Disposition : Petition allowed

Judgement :

Bashir A. Kirmani, J.

1. On 27/28 of April 2004, respondent herein instituted a Civil Suit against petitioner seeking to have them perpetually restrained from evicting him forcibly without adopting due course of law prescribed under Wakafs Act, which was contested by defendant-petitioner herein among others on the ground that trial court has no jurisdiction to try the suit in view whereof following issue was formulated on 8.12.2004:

1. Whether the jurisdiction of this Court to hear and decide the suit is barred under Section 62 of the Jammu and Kashmir Wakafs Act 2001' OPD

And after hearing parties thereupon decided the issue on 25.7.2005 against defendant/petitioner and assuming jurisdiction posted the case on 9.8.2.005.

2. Aggrieved thereby the petitioner herein impugns the order mainly on the ground that learned trial Judge landed into an error by assuming jurisdiction in violation of Section 62 of the Wakafs Act even while the judgments relied upon by him ad not apply to the case.

3. During course of submissions while petitioner's counsel has reiterate the contents of appeal, none is present to be heard for respondent who appears to have been proceeded against in exparte under interim order dated 1.2.2008 passed by a co-ordinate bench of this Court. Similarly delay of one day involved in filing the appeal also appears to have been condoned by another coordinate Bench of this Court on 20.11.2005.

4. I have heard petitioner's counsel and considered the matter. It appears that plaintiffs case before trial court was that the land forming subject matter of the suit, admittedly being Wakaf property had been leased out to one Raj Paul in 1978 on a monthly rent of Rs. 100/- who together with plaintiff started joint business of building material and furniture etc therein under name and style of 'M/s Kundan Lal Raj Paul' where after he voluntarily retired from business with the result that same along with suit premises came under his occupation where he was currently carrying on business to earn livelihood and besides continuously paying rent on behalf of the original lessee namely Raj Paul was also a regular tax payer to different departments of the Government. It was also claimed that he sought regularization of his occupation of the premises from petitioner / authorities while also trying for transfer of land in his favour but still the defendant petitioner were trying to evict him without taking recourse to law. After consideration of the matter, learned trial Judge while recording satisfaction regarding possession of suit property by respondent-plaintiff and observing that the same was admittedly a wakaf property opined that no action whatsoever had been initiated by the authority prescribed under Wakafs Act for eviction of plaintiff the would be entitled to injunctive relief as sought by him, for which reliance was placed on following law declared by Hon'ble Supreme Court in the judgment passed in 'Lallu Yashwant

Singh v. Rao Jagdish Singh AIR 1968 SC page 620.

It is well settled that where a person is in settled possession of the property; even on the assumption that he has no right to remain on the property, he can not be dispossessed by the owner of the property, except by recourse to law.

5. Proceeding further learned trial Judge while observing that there was no provisions under Wakafs Act enabling plaintiff/respondent to agitate his grievance, ultimately decided to assume jurisdiction by relying on the following passage of Supreme Court judgment passed in 'Dhula Bhai v. State of Madhya Pradesh' reported as : [1968]3SCR662 :

(i) Where the statute give a finality to the orders of the Special tribunals the civil courts jurisdiction must be held excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

Judge as aforesaid that has to be assessed in totality of circumstances obtaining in the matter.

6. Before proceeding further, it would be appropriate to notice that way back on 11.1.1993 the Administrator, Aquaf, Jammu with powers of Tehsil Committee under Wakafs Act appears to have made a reference to the Eviction Authority of Wakafs regarding suit premises informing him that under an agreement dated 29.0.1986 land measuring 69 feet on North, 78 feet on South 33 feet on East 36 feet on West was leased out to one Raj Paul son of Manga Ram on a month rent of Rs. 150/- who raised four 'khokhas' thereupon without permission of Aquaf and accordingly sought his eviction. The Authority aforesaid appears to have summoned the lessee Raj Paul, who reportedly filed his objections contending that the premises had been leased put to him way back in 1960 on monthly rent of Rs. 40/- which he was continuously paying till December 1992 and as such he could not be said to be an authorized occupant. He also pleaded that he was running a firewood depot on the premises and had not raised any khokhas and beside

placing documents relied upon by him on record, produced his witnesses namely, Mohd Yousaf and Mohd Ramzan also before the Eviction Authority who after consideration of the matter found him to have been in unauthorized occupation of the premises and accordingly ordered his eviction therefrom vide order dated 27th December 1995.

7. This order appears to have been challenged by present respondent-plaintiff before this Court vide OWP No. 466/04 which was apparently dismissed as withdrawn on 26.4.2004 with liberty to pursue other available remedy where after he instituted the suit before the trial court on 28.4.2004, wherefrom the order impugned was passed.

8. With that circumstantial backdrop the position of parties and sequence or events relevant to the matter appeals to be, first that plaintiff-respondent is not the original lessee of premises under reference and appears to have occupied the same somehow-after entering into a partnership as per his own case with the original lease who is claimed to have retired therefrom leaving the property to him; Secondly, no material whether documentary or whatsoever is on record to show or suggest the nature of transaction whatever between erstwhile lessee and the respondent-plaintiff; thirdly, Unit previous to institution of civil suit by plaintiff-respondent wherein impugned order was passed, the matter had already been adjudicated upon by the Eviction Authority (who at the relevant time used to be a Sub Judge of State Judiciary on deputation) who had ordered eviction of erstwhile lease even after his participation in the proceedings; and finally, that independent of his claim of having entered into possession after / through the erstwhile lease whose eviction had already been ordered way back in 1995 and who had not preferred any appeal there against, respondent-plaintiff had no capacity to plead for claiming legitimate possession of the land under reference, which, needless to say is admittedly a wakaf property.

9. Before proceeding ahead it would be appropriate to mention that at the time eviction order against erstwhile lessee Raj Pal was passed then Act of 1978 was holding the field whereas at the time of institution of the suit before trial court wherein the impugned order was passed, the 'Jammu and Kashmir Wakafs Act of

2001' was in force with the earlier Act repealed. A few relevant provision therefrom having bearing on the matter may be noticed. Under Section 3 (o) the expression ' unauthorized occupation' in relation to wakaf property has been defined to mean and include continuation of occupation after the authority whether by way of lease, mortgage or any mode of transfer, or otherwise where under he was allowed to occupy the property had expired or stood determined for reasons whatsoever. Under Chapter V of the Act under Section 45 whereof the Unauthorized Occupants, who happen to be so in opinion of concerned Tehsil Committee (in present case the Administrator Aquaf) could be evicted after issuance of a notice for showing cause against the same. Under Section 46 after consideration of the cause shown and evidence produced by him in support thereof such unauthorized occupant can suffer an order of eviction for reasons to be recorded. It would be appropriate to mention here that under earlier Act of 1978 the Tehsil Committee had delegated its powers of eviction to the Authority under Section 21 thereof and instead of making order of eviction a reference would be made to such authority for passing orders in terms of reference after hearing other side against which an appeal could be preferred to the Govt.- now J&K; special Tribunal under the 'Special Tribunal Act of 1986', which despite an adverse order does not appear to have been done in the instant case by the erstwhile lessee. Instead the respondent-plaintiff appears to have approached this Court by way of writ petition as already mentioned hereinbefore. However, under Section 56 of the Act, orders passed there under have been given finality and are not amenable to be questioned in any original suit, application or execution proceedings and no injunction can be granted by any court or authority in respect of any action taken or to be taken under powers vested in any authority under the Act. As already said when the impugned order was passed Wakafs Act of 2001 was in force and as such provisions of Section 56 summarized as above held the field in view whereof even eviction notice if issued by the erstwhile authority could not be challenged through a civil suit and as such there was no question of granting an injunction there under.

10. In that view of the matter, the Impugned order of the trial court to assume jurisdiction in the matter does not appear to have reflected the correct legal position. It may be reiterated that in terms of the Wakafs Act the petitioner was an

unauthorized occupation in terms of Section 3 (o) quoted above for want of legal sanction to justify his occupation of the land under reference and as such was amenable to eviction notice/action under Sections 45 and 46 quoted hereinabove which accordingly, attracted the bar created under Section 56 which for the sake of reference may be reproduced herein below:

56. Finality of Order.

Save as otherwise expressly provided in this Act, every order made by the Chairman, Tehsil Committee or appellate authority under the Act shall be final and shall not be called in question in any original suit, application or execution proceedings and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Needless to say that all actions taken under the Act of 1978 are saved under Section 94 of 2001 Act.

11. That takes me to another aspect of the matter pertaining to the respondent-plaintiffs claims of having lease hold rights over the land under reference. Even while this claim cannot be accepted on its face for the reasons that respondent-plaintiff has not been able to bring anything on record of the trial court to show that in legal sense any such right vested in him still then such a right even, if assumed to be existing would stand circumscribed in terms of Section 73 which enlarges the scope of Section 55 of 1978 Act which prohibits creation of tenancy rights even in favour of persons claiming to be lessee of wakaf property. For reference Section 73 may be quoted verbatim herein below:

73. Restriction on leasehold rights.

Notwithstanding anything contained in the Transfer of Property Act, Samvat 1977, or any other law for the time being in force, the lease of any immovable property in favour of any person by the Council or any Tehsil Committee under the Act or any instrument of Wakaf to manage and supervise any Wakaf shall not create any tenancy rights in the property in favour of such person.

12. The quoted provision as such while taking provisions of Transfer of Property Act within its sweep, almost extinguish whatever lease hold rights could be claimed by any person under law or instrument whatsoever. As a matter of fact, rigor of this provision is so wholesome that it almost washes away whatever claims/rights of respondents-plaintiff were or could be projected before the trial court in view whereof no question of granting injunctive relief to him or assuming jurisdiction in the matter could arise. This situation is further reinforced by provisions of Section 74(S.54 of 1978 Act) which gives overriding effect to the provisions of Wakafs Act in following terms:

74. Act to override other laws

The provisions of this Act, and the rules and orders made thereunder shall have the overriding effect notwithstanding anything to the contrary contained in any other law or any instrument having force, by virtue of such other law.

In sum and substance therefore, in view of circumstances of the case and legal position obtaining the learned trial Judge below appears to have wrongly assumed jurisdiction in the matter.

13. Before parting however, it would be appropriate to consider the bar on jurisdiction of civil courts in terms of Section 62 of the Wakafs Act of 2001 as pleaded by petitioner-defendant throughout. Before assessing the contention it would be appropriate to quote the section herein below:

62. Bar on jurisdiction of Civil Courts

Notwithstanding anything contained in any other law for the time being in force, no suit or other legal proceedings shall lie in any civil court or tribunal in respect of any dispute, question or other matter relating to the title of any Wakaf or Wakaf property or any other matter which is required by, or under, this Act to be determined by the authorities under the Act.

A plain reading of section above quoted reveals that it could perhaps be marginally relied upon by petitioner-defendant because it only squarely bars jurisdiction of civil courts to entertain suits or other legal proceedings relating to any dispute,

question or other matter pertaining to title of any wakaf or Wakaf Property and adds any other matter which is required by, the Act to be determined by the authorities thereunder, which further renders the assumption of jurisdiction by learned trial court bad.

14. While concluding, however, it would also be appropriate to refer to the judgments relied upon by learned trial Judge while passing the impugned order. The first one, 'Lallu Yashwant Singh v. Rao Jagdish Singh' AIR 1968 SC page 620 only lays down that even a person in unlawful possession of a property cannot be evicted otherwise than in accordance with law which in the circumstance catalogued above does not appear to be attracted to the case because the procedure under Wakafs act appears to have been complied with when the basic eviction order against respondents predecessor-in-interest was passed. Similarly the judgment in 'Dhula Bhai v. State of Madhya Pradesh' reported as : [1968]3SCR662 lays down that where a Special Tribunal created under a particular Act does not act as a civil court would have acted, ouster of jurisdiction of the civil court cannot be easily accepted. This authority, too does not appear to be attracted because the original lease as already seen had participated in the eviction proceedings before the Eviction Authority and had been heard in the matter like the petitioner, in observance of the procedure borrowed from C.P.C.

15. Accordingly and for all that has been said above this Revision Petition is allowed and the impugned order dated 27.5.2005 passed by 3rd Civil Subordinate Judge (Excise Magistrate) Jammu is overset, and respondent/plaintiffs civil suit rejected for want of jurisdiction.

16. Matter stands disposed of. Registry to follow up.